

## § 40.255

for authorization to do so to the regional director (compliance) in accordance with § 40.217. Where the manufacturer intends to file claim for credit, allowance, or refund of tax on tax determined products he shall comply with the provisions of §§ 40.311 and 40.313.

[T.D. 6871, 31 FR 37, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986]

### § 40.255 Shortages and overages in inventory.

Whenever a manufacturer of tobacco products makes a physical inventory of packaged tobacco products in bond, either as part of normal operations or when required by an ATF officer, and such inventory discloses a shortage or overage in such products by kind as recorded and reported (*i.e.*, small cigars, large cigars, chewing tobacco, snuff, pipe tobacco, or roll-your-own tobacco), the manufacturer shall enter such shortage or overage in the records required by § 40.183. Shortages or overages in inventories made at different times may not be used to offset each other, but shall be recorded and reported separately. Unless the manufacturer establishes that a shortage was not caused by a removal subject to the tax the manufacturer shall determine the tax on any shortage, make an adjustment in Schedule A of his next semimonthly tax return and pay the tax thereon. If, after paying the tax on a shortage, the manufacturer satisfactorily establishes that the shortage was not caused by a removal subject to tax, then such payment would be an overpayment of tax which the manufacturer may recover as provided in § 40.286. Where the manufacturer can establish prior to paying the tax on a shortage, that the shortage was not the result of a removal subject to tax he shall submit an explanation of such shortage with his report for the month in which the shortage was disclosed and, if appropriate, he may file claim for remission of tax liability as provided in § 40.287. When an overage is disclosed which the manufacturer can explain, he shall include such explanation in his monthly report and re-

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fund of any overpayment may be recovered as provided in § 40.286. Whenever a physical inventory discloses a shortage or overage of tobacco products which have not been packaged the manufacturer shall appropriately enter such shortage or overage in his records and shall, at the time required by the Regional Director (Compliance), furnish an explanation in the form of a claim for remission of tax liability as provided in § 40.287. The manufacturer shall pay the tax on any shortage or portion thereof for which he is unable to furnish an explanation acceptable to the Regional Director (Compliance).

[T.D. ATF-232, 51 FR 28082, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986, as amended by T.D. ATF-289, 54 FR 48840, Nov. 27, 1989; T.D. ATF-424, 64 FR 71931, Dec. 22, 1999]

## Subpart I—Claims by Manufacturers

### GENERAL

### § 40.281 Abatement of assessment.

A claim for abatement of the unpaid portion of the assessment of any tax on tobacco products or any liability in respect thereof, may be allowed to the extent that such assessment is excessive in amount, is assessed after expiration of the applicable period of limitation, or is erroneously or illegally assessed. Any claim under this section shall be prepared on Form 2635 (5620.8), in duplicate, and shall set forth the particulars under which the claim is filed. The original of the claim, accompanied by such evidence as is necessary to establish to the satisfaction of the regional director (compliance) that the claim is valid, shall be filed with the regional director (compliance) for the region in which the tax or liability was assessed, and the duplicate of the claim shall be retained by the manufacturer.

(68A Stat. 792; 26 U.S.C. 6404)

[T.D. 6871, 31 FR 38, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28083, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-251, 52 FR 19340, May 22, 1987]

### § 40.282 Allowance of tax.

Relief from the payment of tax on tobacco products may be extended to a